

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
 )  
vs. ) No. 04-30004-MAP  
 )  
ROOSEVELT ARCHIE )

FILED  
JUL 15 2004  
U.S. DISTRICT COURT  
DISTRICT OF MASS

MOTION TO DISCLOSE IDENTITY OF CONFIDENTIAL INFORMANT

Now comes the defendant in the above entitled action and moves this Honorable Court for an order directing the Government to disclose the identity of the confidential informant utilized during this investigation and as his basis, therefore, asserts the following:

On April 17, 2003 officers of the Chicopee Police Department arrested the defendant within the interior of 368 Meadow Street, 2<sup>nd</sup> Floor, Chicopee, Mass. The defendant was charged with a criminal complaint with violations of state law concerning marijuana, cocaine, and a firearm found within the interior of the address.

At the police station the defendant gave officers a written statement. In the statement the defendant acknowledged ownership of the marijuana but denied ownership of the cocaine and the firearm. In his statement to the police the defendant claimed he could identify the person to whom the firearm and cocaine belonged, but that he feared a reprisal for doing so.

Defendant believes and therefore avers that the confidential informant utilized by the Chicopee Police Department is an individual identified as Daniel Tereso, the defendant intends to establish at trial that the informant brought the cocaine and firearm to the apartment prior to the defendant's arrest.

Defendant believes and therefore avers that Tereso brought the cocaine and firearm to the location when defendant was arrested in order to escape liability for his own pending criminal cases. Defendant asserts Tereso called the defendant prior to his arrest and asked him to bring a portion of the drugs to Tereso at a nearby location.

The defendant intends to assert the ownership, control, and responsibility for the cocaine and firearm rests with Tereso and not the defendant as part of his defense to the instant indictment.

Disclosure of confidential informants and other informants, agents, and cooperating individuals is controlled by Roviaro v. United States, 353 U. S. 53 (1957). Roviaro requires a focus on whether the informant possesses facts which are relevant and material to the accused in preparing his defense upon the merits, or “essential to a fair determination of a cause”, and a case-by-case balancing of an individual’s right to prepare his defense vis-a-vis the public interest in protecting the flow of information. 353 U.S. at 60-61, 66, 77. See also United States v. Fischel, 686 F. 2d 1082 (5<sup>th</sup> Cir. 1982); and United States v. Deutsch, 475 F. 2d 55, 56-57 (5<sup>th</sup> Cir. 1973). United States v. Auten, 632 F. 2d 478, 481 (5<sup>th</sup> Cir. 1980).

Defendant’s requests specifically ask the government to disclose the existence and identities of informants which fit the criteria for disclosure set out in Roviaro, and its progeny. Clearly, to the extent that the government intends to call such informants as witnesses at any pretrial hearing or at trial, disclosure is warranted. Such disclosure should be required sufficiently soon (pretrial) in order that the defendant may conduct appropriate background investigation and otherwise be prepared to effectively cross-examine such witnesses and, with regard to those informants or cooperating witnesses, whom the government does not intend to call as witnesses, their status as alleged participants or observers of activities included in the indictment makes their availability to defendant for an interview crucial to the preparation of his defense.

The Roviaro inquiry defies mechanical solutions in determining whether the government’s privilege may be breached, a case by case approach is better suited to this requirement. U.S. v. Perez, 299 F. 3<sup>rd</sup> 1 (1<sup>st</sup> Cir.) 2002, U.S. v. Robinson, 144 F. 3<sup>rd</sup> 104 (1<sup>st</sup> Cir. 1998), U.S. v. Formanczyk, 949 F. 3<sup>rd</sup> 526 (1<sup>st</sup> Cir. 1991).

In this request defendant does not so much seek disclosure of an anonymous informant, but rather a confirmation that a known individual was acting as an agent of the government

during the time period covered by this indictment.

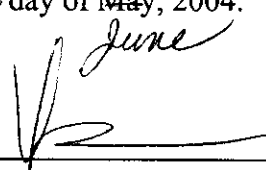
THE DEFENDANT

BY: \_\_\_\_\_

Vincent A. Bongiorno, Esq.  
95 State Street, Suite 309  
Springfield, MA. 01103  
(413) 732-0222  
BBO #049040

CERTIFICATE OF SERVICE

I, Vincent A. Bongiorno, Esq., do hereby certify that I have served a copy of the foregoing to the Assistant United States Attorney, United States District Court, 1550 Main Street, Springfield, MA. 01103 this ~~10th~~ <sup>June</sup> day of ~~May~~, 2004.

\_\_\_\_\_  
Vincent A. Bongiorno

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA    )  
                                      )  
vs.                                 ) NO. 04-30004-MAP  
                                      )  
ROOSEVELT ARCHIE             )

AFFIDAVIT

Now comes Roosevelt Archie and being duly sworn hereby deposes and states as follows:

I am the defendant in the above entitled action. I have read the facts contained in the within foregoing motion and they are true to the best of my information, knowledge and belief.

Signed under the pains and penalties of perjury this 10<sup>th</sup> day of June, 2004.

A handwritten signature in cursive script, reading "Roosevelt Archie", is written over a horizontal line.

Roosevelt Archie